

Request for Reconsideration:

The Office Action reports that claims 108-167 have been renumbered as claims 111-170. In the foregoing amendments, Applicants refer to the claims as renumbered.

Applicants are amending claims 111 and 119 and are adding claims 171-183 to better describe the claimed invention. In addition, Applicants are cancelling claims 112-118 and 120-170, without prejudice. As a result of this amendment, claims 111, 119, and 171-183 are pending in this application. No new matter is added by this amendment, and this amendment is fully supported by the specification. E.g., Appl'n, Page 2, Lines 2-6 and 11-22; Page 3, Lines 10-27; Page 5, Lines 4-8; Page 6, Lines 27-30, and Page 7, Lines 1-5; Page 11, Lines 15-30, and Page 12, Lines 1-7; Page 19, Lines 9-11; Page 21, Lines 2-3. No fees are due as a result of this amendment. Nevertheless, in the event of any variance between the fees determined by Applicants and those determined by the PTO, please charge any such variance to the undersigned's Deposit Account No. 02-0375. Applicants respectfully request that the Examiner enter this amendment and reconsider the above-captioned patent application in view of the foregoing amendment and the following remarks.

Remarks:

1. Objections and Rejections.

Claims 166 and 167 and claim 133 are objected to as allegedly including certain spelling and typographical errors. Claims 125-127, 161, 162, and 162 stand rejected under 35 U.S.C. § 112, ¶2, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 129, 130, and 160-165 stand rejected under 35 U.S.C. § 103(a), as allegedly rendered obvious by Mike Cassidy, *There's A Lot Of Physics In A Glass Of Beer - The Science Of Six Packs*, SAN JOSE MERCURY NEWS, July 31, 1990, at C1 (hereinafter "Cassidy"). Moreover, claim 131 stands rejected under 35 U.S.C. § 103(a), as allegedly rendered obvious by Cassidy in view of U.S. Patent No. 4,322,008 to Schneider. Because these claims have been canceled, Applicants maintain that these objections

and rejections are now moot and respectfully requests that the Examiner withdraw these objections and rejections.

Claim 111, 112, 117, 118, 127, and 128 stand rejected under 35 U.S.C. § 102(b), as allegedly anticipated by Cassidy. In addition, claims 111-114, 117, 118, and 124-127 stand rejected under 35 U.S.C. § 103(a), as allegedly rendered obvious by Cassidy in view of U.S. Patent No. 5,966,966 to Botsaris et al. (“Botsaris”) and claims 115, 119-123, and 167 stand rejected under 35 U.S.C. § 103(a), as allegedly rendered obvious by Cassidy in view of Botsaris, and further in view of Phanny, F: INT: PAPP: GALA INVITE, www.mit.edu/~mbarker/sum97/awar970630.txt, June 30, 1997 (hereinafter “Phanny”), published on the Massachusetts Institute of Technology web site. With the exception of claims 111 and 119, none of the rejected claims currently is pending in this application, and Applicants maintain that with respect to the canceled claims, these rejections are now moot and respectfully request that the Examiner withdraw those rejections. With respect to the rejections of claims 111 and 119, Applicants respectfully traverse.

2. Anticipation Rejections.

As noted above, claim 111 stands rejected as allegedly anticipated by Cassidy. Applicants respectfully traverse.

Cassidy describes the situation in which “a nearly frozen beer will freeze up when you open it.” Cassidy, Page 3, Line 30. In Cassidy, Professor Bohren quotes others reporting this situation, as saying “It’s amazing. The whole bloody thing freezes throughout.” Id. at Lines 31-32. Applicants maintain that the amendments to claims 111 clarify at least two features distinguishing claim 111 over Cassidy. First, the method of claim 111 involves “a draught-dispensed alcoholic beverage” and one of its steps provides for “delivering the cooled beverage into said vessel, subjecting the cooled beverage . . . to . . . ultrasound signals . . .” Appl’n, Claim 111 (as amended; emphasis added); see also Appl’n, Page 2, Lines 2-6. Second, another of the steps of Applicants’ claimed method provides for “forming a plurality of ice crystals in said vessel . . .” Id.; see also Appl’n, Page 2, Lines 11-22. Unlike Applicants’ claimed invention, Cassidy refers to the freezing up of a newly opened, near frozen bottle of beer.

Moreover, the method described in amended claim 111 provides for the formation of a plurality of ice crystals. Cassidy, however, describes the undesirable situation in which a near frozen bottle of beer “freezes throughout” when opened. Applicants’ claim 111 further describes that the plurality of ice crystals from “a portion of said water content of said dispensed beverage.” Thus, the plurality of ice crystals may be suspended in the unfrozen portion of the dispensed beverage. Therefore, Applicants maintain that Cassidy does not disclose at least these steps of the claimed method and respectfully request that the Examiner withdraw the anticipation rejection of claim 111.

3. Obviousness Rejections.

As noted above, claim 111 stands rejected as allegedly rendered obvious by Cassidy in view of Botsaris and claim 119 stands rejected as allegedly rendered obvious by Cassidy in view of Botsaris, and further in view of Phanny. In order for the Office Action to establish a *prima facie* case of obviousness, at least three criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to those of ordinary skill in the art, to modify the primary reference as proposed by the Office Action. Second, there must be a reasonable expectation of success. Third, the prior art references must disclose or suggest all the claim limitations. MPEP 2143. Applicants respectfully traverse.

a. Claim 111.

With respect to claim 111, the Office Action contends that “Botsaris teach[es] a process and system for freeze concentration using ultrasound nucleation, also called sonocrystallization.” Office Action, Page 5, Lines 8-9. As discussed above, Cassidy describes the phenomenon in which a supercooled beer is opened and suddenly freezes solid. While Botsaris describes a process for “freeze concentration” of a liquid using ultrasonic nucleation. Neither Cassidy nor Botsaris discloses or suggests all of the steps of the claimed method including (1) “delivering [a draught-dispensed] cooled [alcoholic] beverage into said vessel, subjecting the cooled beverage . . . to . . . ultrasound signals . . .,” (2) “forming a head of foam on the beverage,” and (3) “forming a plurality of ice crystals in said vessel . . .” As explained

above, Cassidy states that “[t]he whole bloody thing freezes throughout,” and the Office Action does not demonstrate that Cassidy discloses or suggests the formation of a head or a plurality of ice crystals “extend[ing] downwards, away from the head.” Appl’n, Claim 111 (as amended).

The Office Action has failed to demonstrate that the elements of claim 111 that are missing from Cassidy are supplied by Botsaris. Moreover, because Botsaris describes a method of “freeze concentration,” it is essential to Botsaris’s process and system that “the ice is separated from the mother liquor.” Botsaris, Column 3, Lines 2-3. Therefore, the Office Action has demonstrated no motivation or suggestion to modify Cassidy’s teachings concerning the accidental, solid freezing of a bottle of beer by Botsaris teaching of us of ultrasound nucleation to generate ice crystals in a liquid for later removal from that liquid, in order to obtain Applicants’ claimed invention. Further, because Cassidy’s supercooled beer freezes completely as soon as it is opened, without the need for ultrasound nucleation, the Office Action has demonstrated no motivation to supply nucleation to Cassidy’s beer bottle before the bottle is opened while the beer is under pressure or after the bottle has opened and the beer has frozen.

Thus, Applicants maintain that the Office Action fails to demonstrate that each and every element of the claimed invention is disclosed or suggested by Cassidy and Botsaris or that there is a motivation or suggestion to combine the teachings of Cassidy and Botsaris to achieve the method claimed in claim 111, as amended. Therefore, Applicants respectfully request that the Examiner withdraw the obviousness rejection of claim 111.

b. Claim 119.

Claim 119 depend from amended claim 111. “If an independent claim is non-obvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious.” MPEP 2143.03 (citations omitted). Therefore, in view of the foregoing amendments and remarks, the obviousness rejection to claim 119 is untenable. Therefore, Applicants respectfully request that the Examiner withdraw the obviousness rejection of claim 119.

4. Claims 171-183.

Claims 171-183 depend, directly or indirectly, from amended claim 111. "If an independent claim is non-obvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." MPEP 2143.03 (citations omitted). Therefore, in view of the foregoing amendments, the obviousness rejections to claims 171-183 are untenable. Therefore, Applicants respectfully request that the Examiner withdraw the obviousness rejection of claims 171-183.

Conclusion:

Applicants maintain that the above-captioned patent application, as amended, now is in condition for allowance, and such disposition is earnestly solicited. If the Examiner believes that the prosecution of this application may be furthered by discussing the application, in person or by telephone, with Applicants' representative, we would welcome the opportunity to do so.

Respectfully submitted,
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Enclosures